

Oregon Public Meetings, Public Records, Record Retention and Ethics Laws

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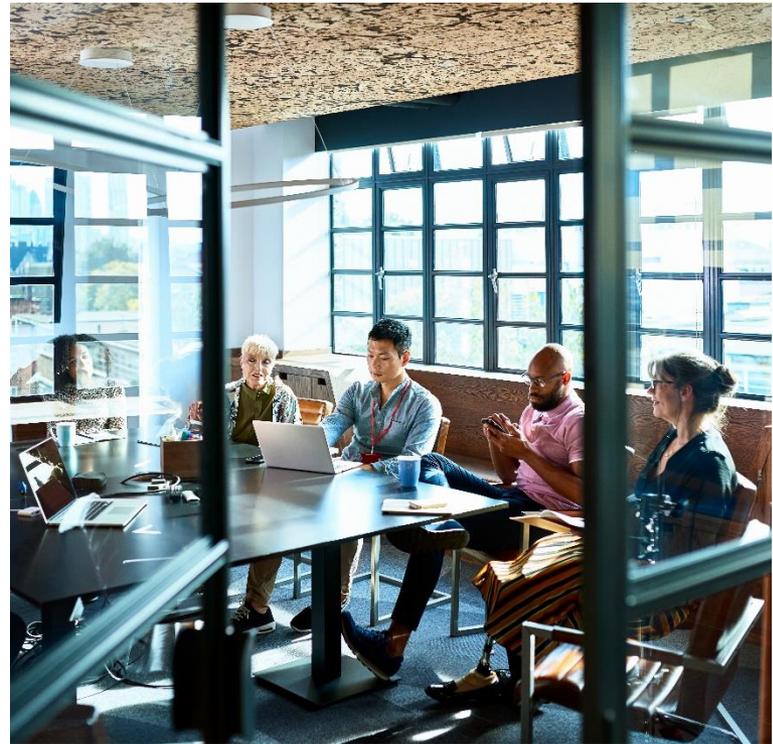
Oregon Department of Justice

Public Meetings Law



Who Does the Public Meetings Law (PML) Apply To?

- Governing bodies of public bodies.
- Advisory body or subcommittee of a public body if it has authority to make decisions for or recommendations to a public body on policy or administration.



What is a Governing Body?

- "**Governing body**" means the members of any public body consisting of *two or more members* with authority to:
 - Make decisions for a public body on policy or administration;
or
 - Make recommendations to a public body on policy or administration. ORS 192.610(3).

Type of meetings that must comply with the PML

- The convening of a governing body for which a quorum is required to make a decision or deliberate toward a decision on any matter. Includes:
 - In-person or phone meetings
 - Group email communications
 - “Serial” email communications
 - Lunch meetings
 - Phone calls
- The purpose of the meeting defines whether it must comply with the PML.



Basic Requirements of the PML

- Meetings must be open to the public unless executive session authorized
- Advance notice to interested parties of meetings, location, principal subjects
- Minutes must be taken at meetings or the meetings must be recorded
- Votes must be cast publicly and recorded; and
- Meetings must be accessible to persons with disabilities

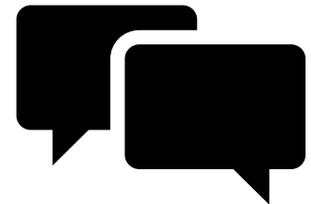
Minutes or Recording Required

- Must record (audio recording) or document in minutes:
 - Member attendance
 - All motions, proposals, resolutions and disposition
 - Results of votes and how each member voted
 - Substance of all discussions
 - Reference to all documents discussed (except for confidential records exempt from disclosure)
 - For emergency meetings, a description of the emergency justifying the meeting



Electronic Public Meetings

- Meetings may be held by phone or other electronic means, but all procedural and formal requirements for meetings apply (access by the public, minutes, notice, etc.).
- Except for executive sessions, public must be able to listen in real time to the meeting.
- Meetings may be conducted with some members of the governing body appearing at the meeting location while others attend electronically.



Public Vote Required

All official actions by a governing body must be taken by public vote.

The vote of each member must be recorded if the public body has 25 or fewer members.

If the public body consists of more than 25 members, recording the vote of each member is mandatory only if a member of that body requests it.

No voting in executive session.

Secret ballots are prohibited.

Serial/Private Communications



- A series of private communications, via email, for example, can violate the PML. The Oregon Court of Appeals has noted that a staff member's e-mails and phone calls with various board members deliberating towards the resolution of a public records request could be a violation of the PML.
- It is recommended that board members not meet in private to discuss business, or exchange private communications about business, even if those involved constitute less than a quorum.

Executive Sessions

- Notice of the meeting must cite specific legal provision authorizing the executive session under ORS 192.660(2).
- Before going into executive session, the presiding officer must announce the specific statutory authority for the executive session.
- Take minutes or record executive session but keep separate from general session minutes.
- Members of the media may attend executive session, with limited exceptions. News media must be instructed not to report about what happened at the beginning of executive session or they may do so.
- Discussions in executive session must stay within the bounds of the specific purpose of the executive session.
- No final action or final decision can be made in executive session. ORS 192.660(6).





Public Records Law

Oregon Public Records Law (PRL)

- General expectation that government will be transparent.
- Government records are available to the public.
- There are exceptions to this “openness” but laws exempting records from disclosure under the PRL are construed narrowly.
- Public Records Law: ORS 192.311 - 192.478.
- The Oregon version of the federal Freedom of Information Act (FOIA).

Who Can Make a Public Records Request? (PRR)



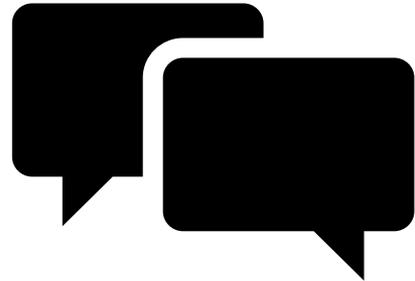
- Every “person” has the right to inspect any non-exempt public record of a public body of this state.
- “Person” includes:
 - Natural person (you and me)
 - Corporation
 - Partnership
 - Firm
 - Association
 - Member or committee of the Legislative Assembly

What is a Public Record?

- “[A]ny writing that contains information relating to the conduct of the public’s business that is prepared, owned, used or retained by a public body regardless of physical form or characteristics.”
- Includes records that were received from someone else.
- “Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.”

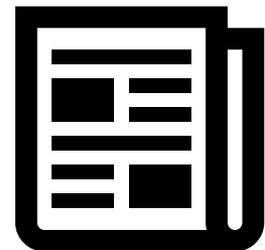
ORS 192.311





What is a “Writing”?

Any information stored on
virtually any medium,
including voice mails, texts,
e-mail, photos.



Making a Public Records Request



A PRR can be in any format but the agency may require that it be in writing.



Agencies must make a written procedure for making a PRR available to the public.



<https://www.oregon.gov/oha/ERD/Pages/Records.aspx>.

Exemptions From Disclosure Under the PRA

Internal communications

- ORS 192.355(1)

Personal privacy

- ORS 192.355(2)

Information submitted in confidence

- ORS 192.355(4)

Disclosure prohibited under state or federal law

- ORS 192.355(8) and (9)



Public Records Retention

- Definition of “public record” differs slightly from what a “public record” is for purposes of the PRL (it’s narrower).
- For purposes of retention, the public record must be necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the agency, in order for the retention requirement to apply.

ORS 192.005

What Public Records Have to Be Retained

Public Records Retention Schedules

- Public records must be retained for a period determined by the applicable retention schedule. ORS 192.105; ORS 192.108.
- Retention schedules are set by the State Archivist within the Secretary of State's Office.
- Example: Oregon Public Health Advisory Board Meeting Records:
 - (a) Retain meeting minutes, agendas and exhibits permanently, transfer to State Archives after 5 years
 - (b) Retain all other records 10 years, destroy

How to Retain

- Archive emails if automatically deleted after certain period of time.
- Print and retain in file.
- Some types of records may be challenging to retain in their original format (e.g., text messages and social media posts). These may be copied and printed.

Penalties

- Knowingly destroying public records without authorization is a class A misdemeanor.



Oregon Ethics Law

- The Oregon Government Ethics Law is a code of ethical conduct for persons who serve public bodies in Oregon. ORS 244
- The Oregon Government Ethics Commission enforces the law.

What is the Oregon Government Ethics Law?

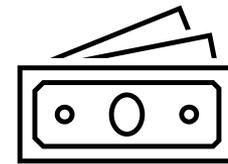
Who does the ethics law apply to?

- All “public officials.”
- “Public official” includes any person who is serving the State of Oregon as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services. ORS 244.020(15).



Basic Requirements of the Ethics Law

- A public official may not use or attempt to use official position or office to:
 - Obtain financial gain
 - Avoid financial detriment for the public official
- Prohibition applies to financial gain or avoidance of financial detriment for relatives, members of the public officials' household, or businesses with which the public official or a relative or member of the household of the public official is associated.
- Must consider whether the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.



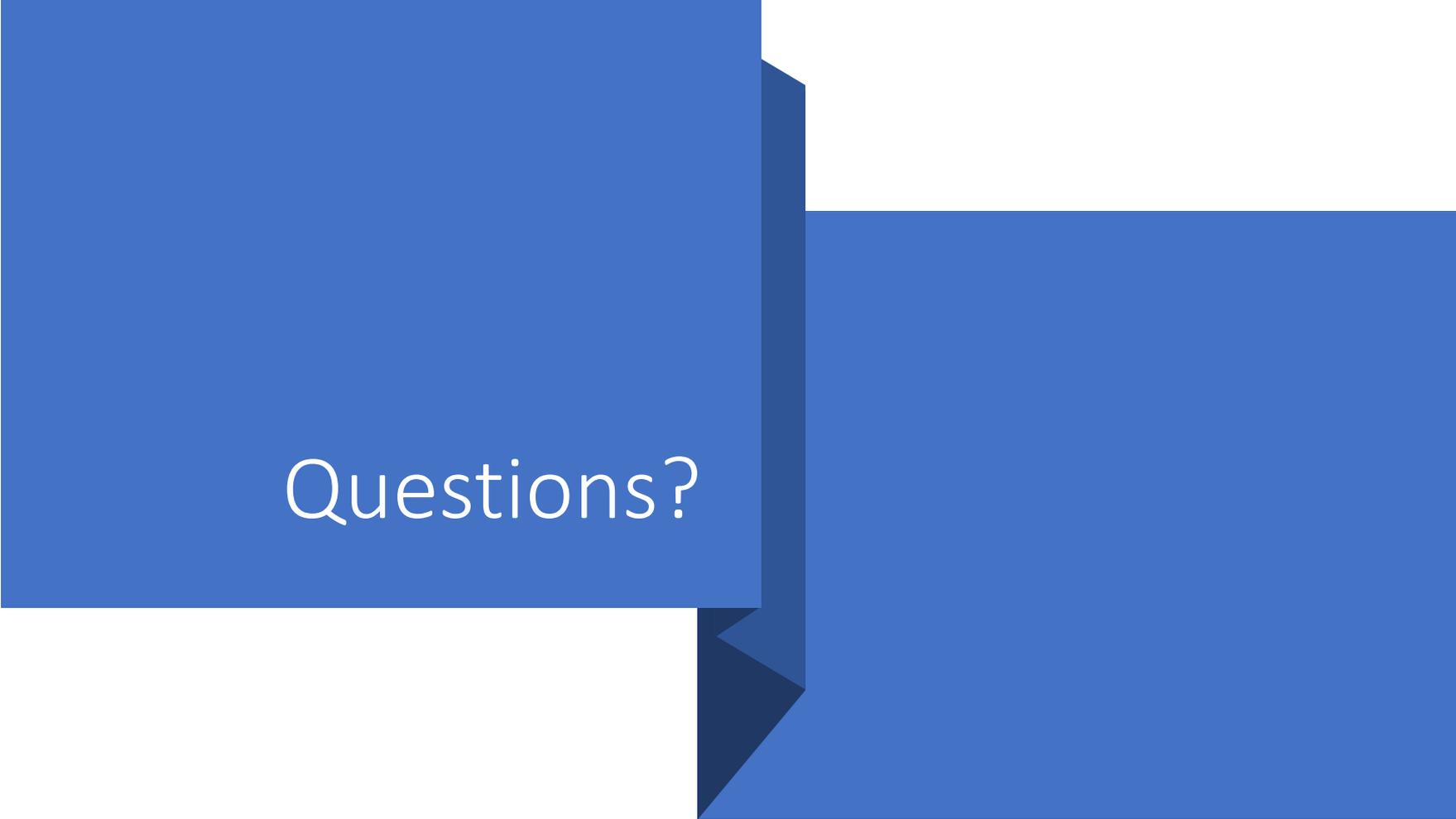
Conflicts of Interest

- **Actual conflict of interest** = Any action, decision or recommendation by a person acting in a capacity as a public official, **that is** to the private pecuniary benefit or detriment of the person, the person's relative, or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of the circumstances of a potential conflict of interest.
- **Potential conflict of interest** = Any action, decision or recommendation by a person acting in a capacity as a public official, **that could be** to the private pecuniary benefit or detriment of the person, the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
 - An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.



Declaring Conflicts

- If a member of the board has an actual or potential conflict of interest the member must:
 - If it's a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action; or
 - If it's an actual conflict of interest, announce publicly the nature of the actual conflict and:
 - (A) Except as provided in (B) refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.
 - (B) If the member's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.
- When a board member gives notice of an actual or potential conflict of interest, OHA shall record the actual or potential conflict in its official records.
- ORS 244.120, 244.130



Questions?